

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 21, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 107, 1/14/1999
SB 130, 1/18/1999
SB 132, 1/14/1999
Executive Action: SB 162; SB 189

HEARING ON SB 107

Sponsor: SENATOR DALE MAHLUM, SD 35, MISSOULA

Proponents: Frank Cote, Deputy Insurance Commissioner, State Auditor's Office
Kim Brown, Attorneys Liability Protection Society, Missoula

Opponents: None

Opening Statement by Sponsor:

SENATOR DALE MALHUM, SD 35, MISSOULA. He presented **SB 107** and handed in his written opening statement **EXHIBIT(bus16a01)**. He then presented amendments to **SB 107 EXHIBIT(bus16a02)**.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, State Auditor's Office. **SEN. MAHLUM** did an excellent job of explaining the bill. It is a complicated bill. This bill was drafted by members of the National Association of Insurance Commissioners (NAIC). Montana is a member. Annually, the members get into subcommittees and discuss what is happening in the communities around the country. **SB 107** is the result of those meetings--meetings held with industry groups, consumer groups and the financial experts of the NIAC. Investments have come a long way in the last fifty years and needs the updating that **SB 107** will give. For example, under current statute, an investment in Microsoft Corp. is not an admitted investment. This bill would change that. Insurance companies would be allowed to do reasonable investing with an eye toward balance. This would also allow these companies to grow their assets while not sacrificing safety and security for the policyholders of that company. Basically, right now, government treasury notes is one of the few places we allow insurance companies to invest their assets. If they invest in that kind of note and interest rates turn around, then you have an interest rate risk. So even though you have invested what you think is a very safe and secure investment, there are things that can change. You run a risk in all types of investments. That why this bill is designed to allow carriers to go out an invest in a broad range of things and do it wisely and fairly so they can attempt to eliminate most of the risks that are out there. I have an analysis **EXHIBIT(bus16a03)** of the old investment law versus the new investment law. On the first page, you will see the current law and, naming the security type, i.e. U.S. Government bond, etc., and the new model law. The first page is for property and casualty insurers and the next page is for life and health insurers. They are fairly self-explanatory. I will be happy to answer any questions you may have. Thank you.

Kim Brown, Controller, Attorneys Liability Protection Society, Missoula. As a domesticated property and casualty company in the State of Montana, we support **SB 107**. We view this bill as a modernization of code that was enacted 40 years ago, which allows insurance companies to make wise investment decisions while at the same time not compromising the Department's ability to

regulate insurance companies. The Department has selected one of the NAIC models which we feel is appropriate. Thank you.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 9.5}

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked **Mr. Cote** to explain Section 21, lines 2 through 27 in relationship to the Foreign Capital Depository Bill of 1997 since other states do not have that same opportunity. **Mr. Cote** replied that he felt this section was dealing with a situation where an insurance company decides to invest in, say, German marks, the actual currency, either physically or on a futures market. Then the company hopes that over time the value of the investment goes up. That is what this particular law is dealing with--the investment in foreign currency as opposed to where foreign dollars could come into the foreign capital depository and be invested in the monetary bank (this is what I, the committee secretary, think he said). The short answer would be that this would not affect what you are trying to accomplish with your foreign depository. **SEN. SPRAGUE** asked what SVO 1 of 3% means. **Mr. Cote** explained that SVO is part of the NAIC. It is called the Security Valuation Office. Their job in life is to look at securities, those issued by different corporations, etc. and rate them on risk. The law looks at how the SVO rates things. First they want insurance companies to have investments in securities that are rated by the SVO. If they are not rated by the SVO then they cannot invest many of their assets in non-rated securities. If they are rated by the SVO, then depending on the high grades and if they are in the high grades, they can invest more of their assets in those types of investments.

SENATOR BEA MCCARTHY asked, concerning the same section, if there was anything in there that precludes one from buying foreign real estate. **Mr. Cote** said that as far as he could recall, there was nothing in there that prevents buying foreign real estate. However, there would be limits as there is in everything else. It says that you could only put 10% of your assets into foreign real estate. **Mr. Bart Campbell, Legislative Assistant**, said that on page 6, line 27 and 28 defines foreign investments. **SEN. MCCARTHY** then asked about page 41, Section 23, on policy loans that a life insurer may take out. She noted that this section is about a loan and what does this mean. **Mr. Cote** answered that the whole idea of investments and this addresses "what are admitted assets" for insurance companies. There are two parts. The bill says, "Here is what you can invest in and if you do, we will

consider these admitted assets for the purposes of finding out what your net worth is. If you invest in something other than what you are allowed to, we are not going to allow those as admitted assets. And this will reduce your bottom line net worth. What this bill says is that policy loans to consumers are still admitted assets as long as they don't exceed the legal reserve that the insurer is required to hold.

SENATOR VICKI COCCHIARELLA asked **Mr. Cote** to explain how this bill is enforced. **Mr. Cote** said that his office is designed to protect the consumer who purchase insurance in the State of Montana. They have a division called the Financial Examinations Division--called The Examinators. The FED receives a quarterly statement from all of the insurers that are licensed here in Montana. These statements are reviewed as well as their annual statement and look at where their assets are. In addition, the Auditor's Office is required by law for our domestic insurers, those who are housed here in Montana, that every five years actually go and do an on-site examination. They look to see if they are complying with Montana laws. They try and stick to a three year schedule for all of those examinations. **SEN.**

COCCHIARELLA said that given the current law and this new bill, how will this affect efficiencies and enforcement? **Mr. Cote** said that his office will have to adjust the processes that are used. Initially, it will take some time to get up to speed. Worksheets are used for this process and these will have to be updated. This will be done.

SENATOR GLENN ROUSH asked about page 65, section 42 concerning the new language on line 4 on page 66. **Mr. Cote** explained that there are certain companies that are not domestic insurance companies but licensed to sell in Montana. Montana law requires them to hold on deposit for the benefit of Montana consumers, a certain amount of cash or cash equivalent. That is held in trust by the Insurance Department should the company go broke. This bill says is that the insurer can invest in U.S. bonds, Canadian bonds or whatever that is considered very safe and secure.

{Tape : 1; Side : A; Approx. Time Counter : 21}

SEN. SPRAGUE asked another question concerning the foreign depository while stating that only foreigners can invest there. Since these are all foreign assets, and these in turn are broken down from marks, yen, etc. back to U.S. currency or the equivalent. They are then asked to take a portion of their portfolio and say invest 1/3 of their assets in bonds, etc. They can ask their depository managers to manage a portion of their portfolio. And of that they can elect to take some of their assets and invest in those various bonds. This depository also

will be insured by Lloyds of London or someone comparable--not FDIC. Would this again fall under this law? **Mr. Cote** said that this would not affect the foreign depository. He now understood the previous question. This bill is designed to affect only the investments of insurers.

SENATOR JOHN HERTEL asked **Mr. Cote** if, while meeting with different investment and insurance groups around the state, he found any group that was very concerned about what this bill would be doing? **Mr. Cote** replied that they did not find any particular industry or consumer group that was opposed to this bill. The State Auditor's Office tries to get their bills off to the industry and consumer groups ahead of time for their reaction and input. The bill did have concerns for members of his own staff. There have been changes to address those concerns. It is complicated and will address anything that should come along at a later date. But they feel very comfortable with the bill at this point.

{Tape : 1; Side : A; Approx. Time Counter : 24.8}

Closing by Sponsor:

SEN. MAHLUM closed. Thank you for the spirited discussion of this bill. **SB 107** is lengthy page wise. It is an act that revises the laws that govern investments by insurers. It amends many sections that needed updating. It adds important new sections. It is a good business and good management practices bill that will help the citizens of Montana. The NAIC has recognized the formation of the bill as being a good one. The amendments that have been proposed would be acceptable. **Mr. Cote** was then asked to explain the amendments to the Committee.

Mr. Cote apologized for bringing the amendments in at such a late date. The amendments address a couple of different things. Number one: they fix grammar problems. Number two: taking the second amendment, there was some concern on the part of some of the staff in the insurance department about "Affiliate investments under 33-2-1113 are not subject to this provision." Our chief examiner felt that the way it was worded would allow an insurance company to put all of their assets into an affiliate and avoid all of the regulation in the law and circumvent what this bill is trying to do.

{Tape : 1; Side : A; Approx. Time Counter : 31.3}

HEARING ON SB 132

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Frank Cote, Deputy Insurance Commissioner, State Auditor's Office
Roger McGlenn, Independent Insurance Agents Assoc.
Al Pontrelli, MT Association of Life Underwriters
Jacqueline Lenmark, American Insurance Assoc.
Victoria Orze, General Counsel, Attorneys Liability Protection Society, Missoula.

Opponents: None

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. SB 132 was requested by the State Auditor's Office. It is an act that removes most insurance fees and insurance license fees and replaces them with a flat fee for insurers applying for or renewing a certificate of authority. The Auditor's Office collects more than 40 fees from insurance companies and agents. Many of these fees are \$10 to \$15. It is expensive to collect and take care of. It is also expensive for the insurance industry as well. More than 100 checks a day are received by the Auditor's Office that must be endorsed, deposited and entered into the accounting system. This bill will help with this massive paper work. This bill will repeal most insurance fees and replace them with a single fee on insurance companies. Fees on out-of-state companies are not being repealed however. Any fines collected will be directly deposited to the General Fund. By the year 2001, this legislation will cause this account to be neutral by appropriating about \$674,000 from the State's special revenue account to the General Fund. So beginning from the year 2002-2003 biennium, insurance companies will pay for the costs of the insurance regulation codes, but again will not subsidize the Fund. SB 132 will make insurance regulation more efficient and less expensive for the State Auditor's Office. It will reduce costs for the insurance companies as well.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, State Auditor's Office. We are proposing a piece of legislation today that will get rid of some of the bureaucracy that we all have to deal with. **Senate Bill 132** will get rid of all the little fees. Two to three different people handle each of the checks that arrive. It costs more than \$10 to process a \$10 check. The insurance companies probably face the same type of costs per check. We

propose a one time check for the fees per year. The insurance carriers receive at this time about 70 cents on the dollar of those fees in regulation. In other words, they pay \$1.00. The Legislature appropriates about 70 cents of that dollar to fund the regulation of insurance companies. The other 30 cents goes into the General Fund. It is a form of double taxation. The industry has complained about this for years to no avail. This bill will over time allow the insurance companies to receive a dollars regulation for a dollars worth of fees paid. We urge a Do Pass.

Roger McGlenn, Independent Insurance Agents Assoc. I do not represent insurance companies. I represent insurance agents on main street, Mt. We rise in support of **SB 132** and also **SB 130**, the companion bill. My comments will speak to the contents of both bills. This bill saves us money. It appears to cost the insurance companies money doing business in the state. On further review of this bill when looking at all these \$10 and \$15 checks, there is a cost savings to the insurance companies as well. A company has to appoint an agent in Montana to do business. That costs \$10 for every appointment. At one time USF&G, United States Fidelity & Guarantee Co., had over 100 agents appointed in this state. They had to write a \$10 check for each one and for every location that agent had. An address change mandated a \$10 check, etc., etc. So indeed it has been a paper blizzard. This bill doesn't change the paper blizzard, but it does combine all the fees into one and that will be a tremendous help. We did have two concerns about this bill back in July when the Department shared their concept of the bill with us. We made written comments back to them in September. One concern was that if this fee were raised from \$600 to \$1900, would companies leave the state. After checking around, none expressed any concern because they did see the savings in many of the small checks they would no longer have to cut. The other one was an increase in fees. The original bill said the fees would be set commensurate with the appropriations by the Legislature to operate the Dept. of Insurance. These bills do not, according to Mr. Cote. We urge a Do Pass.

{Tape : 1; Side : A; Approx. Time Counter : 46.1}

Al Pontrelli, MT Association of Life Underwriters. We definitely are strong supporters of this bill. We concur with all that Mr. McGlenn said.

Jacqueline Lenmark, American Insurance Association. We also support this legislation. The Insurance Department also presented the industry with several proposals in the late summer

to address the paper blizzard. We recognize their best efforts and recommend a Do Pass. Thank you.

{Tape : 1; Side : B; Approx. Time Counter : 0.5}

Victoria Orze, General Counsel, Attorneys Liability Protection Society, Missoula. We are a domestic insurer and a risk protection group that does business in 15 different states. I am here to voice our support as well. We believe this bill will streamline our process and it will be a cost savings measure to us. The increase of fees seems to be appropriate and necessary in that in the future we will see the direct benefit of the fees that we pay. It is crucial to companies like us that are domestic here and foreign in other states, but operate outside of Montana that the Department maintain credibility nationally and maintain accreditation from NAIC. In this manner, we can exist without being regulated by every other state in which we do business. We urge a Do Pass.

Opponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 2.2}

Questions from Committee Members and Responses:

SENATOR BEA MCCARTHY asked **Mr. Cote** on page 3, line 29, 30, where \$1900 is inserted, if this is the only fee increase throughout this bill? **Mr. Cote** said that he believed that this was the only insertion of a fee. They did retain, on page 5, some fees and others were not retained. The reason being the fee on the top of page 5 is the fee for non-resident insurance agents. Their fee is still \$100 and the annual renewal fee is \$10.

SEN. MCCARTHY asked about the fiscal note. She wanted to know if there would be technical concerns on local governments even though there would be no fiscal impact on local governments. **Mr. Cote** said the Budget Office check that and he could not understand their thinking at all. It just did not apply to this bill or local governments.

SEN. VICKI COCCHIARELLA asked **John Huth, State Auditor's Office**, how the \$674,000 would or will be handled. Right now the insurance companies give \$670,000 more than what they receive in regulation from the Dept. So that money is in the General Fund. The long range impact is once the fee is brought down, dollar for dollar, the General Fund will be short approximately \$670,000 a year starting in Fiscal Year 2002. **SEN. COCCHIARELLA** then asked if any of the General Fund money goes back to the Auditor's Office? Or in other words, we have been over charging the

insurance companies. **Mr. Huth** said yes the end result is exactly that. The insurance program receives some General Fund monies right now. Then there is some state special revenue monies that comes from accreditation fees, etc. The licenses and permits from the insurance industry pay about as of Fiscal Year 1998, approximately \$2,475,000 in fees that went directly to the General Fund. But the insurance program in turn receives General Fund Appropriations of approximately \$1.8 million. So in essences, they are supporting the General Fund approximately \$675,000 this year. When this proposal was made, Mr. Lewis in the Budget Office, required they make it revenue neutral for this biennium. That is why the committee sees the language where appropriations are asked to return the money to the General Fund in 2001.

{Tape : 1; Side : B; Approx. Time Counter : 7.9}

SENATOR FRED THOMAS asked **Mr. Cote** about the renewal of the out-of-state producers license of \$10 and wondered if Mr. Cote had a problem in raising that fee. **Mr. Cote** did not have a problem with that but CI-75 might have a problem.

SEN. THOMAS then asked that there would be a renewal on the surplus lines license of \$50 and wondered if Mr. Cote would have a problem in reducing that. **Mr. Cote** said that the reason that fee was left in place is this is a hybrid situation that does not get taken care of with the \$1900 fee. The Office felt that it made sense for certain fees to remain in the bill so that they are not getting a free ride at the expense of the carriers who are paying the \$1900.

SEN. THOMAS asked if \$50 was needed to handle the filing. **Mr. Cote** said that it probably didn't cost \$50 to renew a license. This was a fee that was put into statute and the Legislature must have felt that \$50 was the appropriate amount.

SEN. THOMAS then asked about the \$75 for continuing education and there was a maximum of \$1500 per organization. He wondered if this seemed high and asked for other thoughts. **Mr. Cote** said that is exactly what the fee is in rule right now--\$75 per course, \$1500 maximum cap. The difference between this statute and what appears in rules is the Dept. is only charging that fee to those who are going and selling their educational services. The fee is not charged to insurance companies who file a course with the Dept. The fee is not charged to the professional insurance agents associations or others because they are made up of insurance personnel. The Dept. does not want to subsidize those who are making a living selling education.

{Tape : 1; Side : B; Approx. Time Counter : 7.9}

ACTING CHAIRMAN MIKE SPRAGUE asked how the General Fund will react in the future to the loss of \$675,000. **Mr. Cote** replied that future legislators could put language into the appropriations bill and say that the Commissioner's Office will revert to the General Fund the \$675,000. They could continue to do that, but they would have to make a positive effort and that would allow the insurance industry to come in and fight that.

Closing by Sponsor:

SEN. HERTEL closed. As you, the Committee, has observed, there is a great deal of acceptance for this bill. The insurance industry has given their approval. It will be more efficient, more streamlined and more cost effective for everyone. I hope that you will give it a favorable decision. Thank you.

{Tape : 1; Side : B; Approx. Time Counter : 12.8}

HEARING ON SB 130

Sponsor: **SENATOR JOHN HERTEL, SD 47, MOORE**

Proponents: **Frank Cote, Deputy Insurance Commissioner, State Auditor's Office**
Ron Ashabraner, State Farm Insurance

Opponents: **None**

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. **Senate Bill 130** is a companion bill to **SB 132**. It is needed because of CI-75. There are fees being established. This bill would provide the contingent voidness provision. It would establish a \$1900 fee for insurers applying for or renewing their certificate of authority to conduct the business of insurance in Montana. The \$1900 represents the flat fee that **SB 132** would establish if it passes. I have a handout **EXHIBIT (bus16a04)**. This handout shows how the fees are scheduled and collected today. **Senate Bill 130** shows how the flat fee would change this procedure and how it would simplify it. Section 2 is a submission to the electorate. Thank you.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, State Auditor's Office. The bill has been well explained. It is simply a companion bill to **SB 132**. I will be available for any questions.

Ron Ashabraner, State Farm Insurance. To be brief, we would recommend a Do Pass on **SB 130** and **SB 132**. We think **SB 130** is an excellent bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR BEA MCCARTHY asked how it was determined that it would take eight pages in the voter's manual to describe these bills. **Mr. John Huth** said that they did not come up with that figure. The Secretary of State is coordinating all the information as to the election costs and criteria for CI-75. Pros and cons are always presented to the electorate and this is the reason for the number of pages.

SENATOR VICKI COCCHIARELLA asked **SEN. HERTEL** about the discussion that might be needed to get this legislation passed by the electorate with all parties seeming to be in agreement. **SEN. HERTEL** said that he has thought of this issue but he would reserve his thoughts until a ruling comes down from the court. The voters will have to be made knowledgeable.

{Tape : 1; Side : B; Approx. Time Counter : 18.9}

Closing by Sponsor:

SEN. HERTEL closed. I feel that both bills have been well discussed. It has great merit and hope that it will also receive a Do Pass.

{Tape : 1; Side : B; Approx. Time Counter : 19.4}

EXECUTIVE ACTION ON SB 162

Motion: **SEN. THOMAS** moved that **SB 162 DO PASS**.

Discussion: **Bart Campbell, Legislative Assistant**, said that when the committee tried to take some action the other day, an amendment was felt needed. As he was putting together an amendment he found in the Insurance Code 33-18-501 which is in

the chapter on unfair trade practices. 501 is a restriction on lenders. It starts out "no person may require as a condition preceding to the lending of money or extension of credit or any renewal thereof, that the person to whom such money or credit is extended or whose obligation as a creditor is to acquire or finance any contract of insurance or renewal thereof through a particular insurer or group of insurers. No person who lends money may:" and then has a whole list of what types of insurance they cannot ask a person to buy in order to get the loan or credit, etc. is listed. It even has some language that they are required to give in writing an explanation to the borrower that the insurance related to such credit extension may be purchased from an insurance agent of the borrower's choice. In talking with **Mr. Cote**, it looks like the committee's concerns are already specifically addressed. So that part is not on this amendment **EXHIBIT (bus16a05)**. This amendment does have the exception for title insurance and it strikes chapters 1 and 2 after Title 33 so that the whole insurance code would come together.

SEN. HERTEL encapsulated the amendment as the first part of the amendment would not be needed. **Mr. Campbell** said that there might be opposition but he did not know for sure.

Motion: **SEN. COCCHIARELLA** moved that SB 162 BE AMENDED.

Discussion: **SEN. COCCHIARELLA** said that she had talked with a banker and title insurance would be like going into another business for them. It would not be something a bank would do. It would double the staff of a small bank. So taking title insurance would be appropriate.

Vote: Motion carried unanimously. 7-0

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 162 DO PASS AS AMENDED. Motion carried unanimously.

{Tape : 1; Side : B; Approx. Time Counter : 24.8}

EXECUTIVE ACTION ON SB 189

Motion: **SEN. ROUSH** moved that SB 189 DO PASS.

Discussion: None

Motion: **SEN. MCCARTHY** moved that SB 189 BE AMENDED.

Discussion: **Bart Campbell** explained the amendments saying they had been edited. As far as the actual explanation, if the committee would recall yesterday that **SEN. SPRAGUE** asked the realtor from Missoula to explain what the amendments did. The realtor went into great detail. He would go through it again if the committee so desired. The biggest one was on Number 3. It was an attempt to clarify the relationship between a realtor and a buyer and a realtor and a seller as to who the realtor is representing.

SEN. HERTEL asked **SEN. BERRY** if any of the amendments

EXHIBIT (bus16a06)

would be detrimental to his bill. **SEN. BERRY** said that the amendments were fine and necessary.

Vote: Motion carried unanimously. 7-0

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 189 DO PASS AS AMENDED. Motion carried unanimously. 7-0

ADJOURNMENT

Adjournment: 10:30 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus16aad)